

Message Text

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ACTION PM-04

INFO OCT-01 EA-07 ISO-00 NSC-05 SP-02 SS-15 CIAE-00 INR-07

NSAE-00 L-03 H-02 OMB-01 SAM-01 SSO-00 NSCE-00 INRE-00

USIE-00 /048 W

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O 130123Z JUL 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC IMMEDIATE 7343

INFO SECDEF WASHDC

JCS WASHDC

CINCPAC HONOLULU

CINCPACAF

CINCPACFLT

CINCPACREPHIL SUBIC NB

CG 13TH AF CLARK AB

C O N F I D E N T I A L MANILA 10140

CINCPAC ALSO FOR POLAD

FROM USDEL 112

E O 11652: GDS

TAGS: MARR:RP

SUBJ: PHILIPPINE BASE NEGOTIATIONS: RESPECT FOR PHILIPPINE LAW

1. SUMMARY: LEGAL SUBGROUP CONSIDERED QUESTION OF APPLICABILITY OF PHIL LAW. USDEL NOTED THAT COURSE OF NEGOTIATIONS THUS FAR HAD NOT LESSENED USG CONCERN RE GOP INTENTIONS. GOP RESTATED CONCEPTUAL BASIS FOR THEIR DEMAND. IN AFTERNOON U.S. SIDE PRESENTED WORKING PAPER DESIGNED TO MOVE GOP INTO POSITION OF ACCEPTING CONCEPT OF IMPLIED EXEMPTIONS. END SUMMARY.

2. ONE OF CLEAREST LESSONS OF FIRST MONTH OF NEGOTIATION ATTEMPTS IS FACT THAT EXTREME FILIPINO SENSITIVITY REGARDING SOVEREIGNTY, NATIONAL DIGNITY AND APPLICATION OF THEIR LAW
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MUST BE TAKEN INTO ACCOUNT IN SOME VISIBLE WAY IN THE

FINAL TEXT OF THE AGREEMENT. WORKING GROUPS HAVE FREQUENTLY BEEN STALLED WHILE SPEECHMAKING ABOUT SOVEREIGNTY GOES ON. MORE SIGNIFICANTLY, GOP PANELS HAVE SHOWN RELUCTANCE TO CONSIDER SPECIFIC U.S. PROPOSALS WHICH THEY SEE AS CONTRA-VENING PHILIPPINE LAW AND THEY HAVE FREQUENTLY JUSTIFIED PORTIONS OF PHIL DRAFT AS REQUIRED BY PHIL LAW. TO THE EXTENT WE HAVE BEEN ABLE TO SIDESTEP THIS ISSUE IN WORKING GROUPS DEALING WITH SPECIFIC ISSUES SUCH AS LABOR AND TAXATION, WE HAVE PLACED INCREASED SIGNIFICANCE ON THE FINAL OUTCOME OF THE NEGOTIATION ON PHIL DRAFT ARTICLE VII, APPLICATION FOR PHIL LAW.

3. LEGAL SUBGROUP DISCUSSED RESPECT FOR PHILIPPINE LAW WITH SOLICITOR GENERAL MENDOZA TODAY AND HE CONFIRMED THAT THIS ISSUE REMAINS OF GREAT IMPORTANCE TO GOP. BASIC GOP POSITION FAVORS EXPRESSION OF SPECIFIC EXCEPTIONS IN PRESENT AGREEMENT, WITH REMAINDER OF PHIL LAW TO BE APPLICABLE. GOP DESIRES THAT EXCEPTIONS BE "POSITIVELY" STATED RATHER THAN STATED AS EXCEPTIONS OR EXEMPTIONS. GOP NOTED U.S. DRAFT ON RESPECT FOR LAW WAS ACCEPTABLE, BUT NOT A SUBSTITUTE FOR THEIR DRAFT. THEY SUGGESTED BOTH BE INCLUDED.

4. U.S. SIDE NOTED THAT COURSE OF NEGOTIATIONS IN SUB-GROUPS HAD NOT ALLEVIATED USG CONCERNS RE ARTICLE VII AND IN FACT HAD STRENGTHENED OUR CONCERN THAT GOP SOUGHT TO APPLY ITS LAWS TO U.S. OPERATIONS IN A MANNER NOT NORMALLY ENCOUNTERED IN OTHER COUNTRIES WHICH WOULD PROBABLY RESULT IN UNACCEPTABLE INCONVENIENCE AND OPERATIONAL INTERFERENCE. U.S. SIDE ASSERTED THAT IMPLIED EXEMPTIONS ARE ESSENTIAL IN ADDITION TO THOSE WHICH CAN BE ACCURATELY ANTICIPATED AND EXPRESSED IN THE AGREEMENT. WE EXPRESSED THE VIEW THAT GOP SHOULD NOT FEEL ITS SOVEREIGNTY THREATENED BY ALLOWING U.S. MILITARY BASES TO EXIST AND OPERATE IN THE SAME MANNER AS FOREIGN BASES ARE ALLOWED IN OTHER COUNTRIES, INCLUDING THE U.S.

5. IN ORDER TO MOVE ALONG DISCUSSION IN AFTERNOON SESSION, U.S. SIDE PRESENTED SHORT PAPER ON SOVEREIGNTY AND RESPECT FOR LAW WHICH ATTEMPTS TO VERBALIZE THE CONCEPTS RELIED
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UPON BY U.S. SIDE IN ARGUMENT DURING THE DAY. PAPER WAS IDENTIFIED AS WORKING PAPER HAVING NO CLEARED STATUS WITHIN USDEL. GOP REPS COMMENTED ON THE PAPER WITH THE SAME UNDERSTANDING, I.E., THAT THEIR COMMENTS WERE PERSONAL REACTIONS WHICH THEY WOULD NOT WANT TO BE HELD TO. FOLLOWING IS LANGUAGE OF WORKING PAPER GIVEN TO MENDOZA ON THAT BASIS:

QUOTE: 1. THE UNITED STATES AND THE REPUBLIC OF

THE PHILIPPINES AGREE TO BE GUIDED IN ALL THEIR ACTIONS BY RESPECT FOR THE SOVEREIGNTY AND NATIONAL DIGNITY OF EACH OTHER.

"2. THE UNITED STATES RECOGNIZES THE SOVEREIGNTY OF THE REPUBLIC OF THE PHILIPPINES OVER ALL THE TERRITORY OF THE PHILIPPINES, INCLUDING THE FACILITIES WITHIN PHILIPPINE MILITARY BASES WHICH HAVE BEEN DESIGNATED FOR U.S. USE. MEMBERS OF THE U.S. FORCES, MEMBERS OF THE CIVILIAN COMPONENT AND DEPENDENTS IN THE PHILIPPINES ARE OBLIGATED TO RESPECT THE LAWS IN FORCE IN THE PHILIPPINES AND TO ABSTAIN FROM ALL ACTIVITY INCONSISTENT WITH THE SPIRIT OF THIS AGREEMENT, IN PARTICULAR FROM ALL POLITICAL ACTIVITY IN THE PHILIPPINES. THE UNITED STATES ASSUMES THE OBLIGATION OF ADOPTING NECESSARY MEASURES TO THIS END.

3. THE U.S. GOVERNMENT RECOGNIZES THAT PHILIPPINE LAW APPLIES INSIDE THE FACILITIES DESIGNATED FOR USE BY U.S. FORCES, EXCEPT TO THE EXTENT PARTICULAR EXEMPTIONS ARE EXPRESSED OR IMPLIED IN THE LANGUAGE OF THIS AGREEMENT. SPECIFIC QUESTIONS OF THE APPLICABILITY OF PHILIPPINE LAW WILL BE RESOLVED WITH DUE RESPECT FOR THE CUSTOMS AND PRACTICES OF OTHER SOVEREIGN STATES IN LIKE CIRCUMSTANCES AND SPECIAL REQUIREMENTS NEEDED TO ENSURE OPERATIONAL EFFECTIVENESS OF MILITARY FORCES." END QUOTE.

6. MENDOZA AND AMB JOSE PLANA, WHO WAS ALSO PRESENT, EXPRESSED THE IMMEDIATE REACTION THAT THE FINAL SENTENCE OF THE PAPER WOULD BE DIFFICULT FOR GOP TO APPROVE. DISCUSSION OF THEIR OBJECTIONS TO THE FINAL SENTENCE FAILED TO ELUCIDATE ANY ADDITIONAL SPECIFIC OBJECTIONS, BUT DID PROVOKE AN EXPANDED STATEMENT OF MENDOZA'S RELUCTANCE TO AGREE TO REFER IN ANY WAY TO INTERNATIONAL CUSTOMS WHICH WERE CONFIDENTIAL

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FORMULATED WITHOUT PHILIPPINE PARTICIPATION AND ABOUT WHICH THE USG WOULD BE IN A BETTER POSITION TO HAVE INFORMATION THAN GOP. SPECIFIC QUESTIONS BY BOTH PLANA AND MENDOZA SUGGESTED THEY ESPECIALLY OBJECT TO ARGUMENTATION BASED ON WHAT U.S. DOES AT ITS OTHER OVERSEAS BASES AND WOULD PERHAPS OBJECT LESS STRONGLY TO PRACTICES OF STATES OTHER THAN THE U.S., BUT THEY REPEATEDLY CLAIMED THEY WOULD BE AT A DISADVANTAGE IN DISCOVERING THE CONTENTS OF SUCH AGREEMENTS. US SIDE NOTED GOP PANEL HAD DEMONSTRATED CONSIDERABLE EFFECTIVENESS IN DISCOVERING CONTENTS OF CURRENT USG AGREEMENTS WITH OTHER COUNTRIES. MENDOZA INDICATED HE WOULD SERIOUSLY CONSIDER THE WORKING PAPER AND TRY TO PROVIDE A RESPONSE WITHIN A FEW DAYS.

7. TODAY LEGAL SUBGROUP INTENDS TO TAKE UP IMMIGRATION ARTICLE, AND CLAIMS IF POSSIBLE. THEREFORE, WE NEED IMMEDIATE WASHINGTON RESPONSE TO MANILA 9673. SULLIVAN

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MILITARY BASE AGREEMENTS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 13 JUL 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: BoyleJA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976MANILA10140
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760268-0940
From: MANILA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760765/aaaaceqy.tel
Line Count: 173
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION PM
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: BoyleJA
Review Comment: n/a
Review Content Flags:
Review Date: 03 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <03 JUN 2004 by CunninFX>; APPROVED <27 SEP 2004 by BoyleJA>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PHILIPPINE BASE NEGOTIATIONS: RESPECT FOR PHILIPPINE LAW
TAGS: MARR, RP, US
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006